

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICAH D. DECLOUETTE,

Plaintiff,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Defendant.

No. C 12-5316 PJH (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a detainee at San Bruno County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
 2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
 3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
 4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
 5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
 6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
 7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
 8 framework of a complaint, they must be supported by factual allegations. When there are
 9 well-pleaded factual allegations, a court should assume their veracity and then determine
 10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
 11 1937, 1950 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 13 elements: (1) that a right secured by the Constitution or laws of the United States was
 14 violated, and (2) that the alleged deprivation was committed by a person acting under the
 15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 B. Legal Claims

17 Plaintiff states he was denied visits with his fourteen month old baby, was denied
 18 medical attention for his shoulder, deputies ridiculed him and he is improperly in
 19 administrative segregation. Plaintiff provides no other information regarding these
 20 allegations and does not describe what defendants were responsible for these actions.

21 These allegations are insufficient to meet the *Iqbal* standard. Plaintiff must provide
 22 specific factual allegations as to what each individual defendant actually did, identified as
 23 closely as possible by time and location, sufficient to make it plausible that he has a claim
 24 for relief against each defendant. Plaintiff must describe how the individual defendants'
 25 actions caused him harm and he must specifically describe that harm.

26 CONCLUSION

27 1. The complaint is **DISMISSED** with leave to amend in accordance with the
 28 standards set forth above. The amended complaint must be filed no later than **February 4,**

1 **2013**, and must include the caption and civil case number used in this order and the words
2 AMENDED COMPLAINT on the first page. Because an amended complaint completely
3 replaces the original complaint, plaintiff must include in it all the claims he wishes to
4 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
5 incorporate material from the original complaint by reference. Failure to amend within the
6 designated time will result in the dismissal of these claims.

7 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
8 court informed of any change of address by filing a separate paper with the clerk headed
9 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
10 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
11 Federal Rule of Civil Procedure 41(b).

12 **IT IS SO ORDERED.**

13 Dated: January 4, 2013



PHYLLIS J. HAMILTON
United States District Judge

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